

1991 MAR -6 PM 1:25

HOUSE OF REPRESENTATIVES

I certify that the attached is a true and  
correct copy of HB 868, which  
was filed of record on FEB 7 1991  
and referred to the committee on:

Corrections

*Betty Murray*

Chief Clerk of the House

FILED FEB 7 1991

By

*Kevin Bailey*

HB. No. 868

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting employment discrimination against certain peace officers and employees of the institutional division of the Texas Department of Criminal Justice for refusing to take a polygraph examination.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. (a) In this Act, "peace officer" means a person who is elected, appointed, or employed by a governmental entity and who is a peace officer under Article 2.12, Code of Criminal Procedure, or other law.

(b) A peace officer or an employee of the institutional division of the Texas Department of Criminal Justice may not be suspended, discharged, or subjected to any other form of employment discrimination because the person refuses to take a polygraph examination.

SECTION 2. This Act does not apply to a peace officer to whom Section 411.007, Government Code, applies.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

# HOUSE COMMITTEE REPORT

91 APR 17 AM 10:16

HOUSE REPRESENTATIVE

1st Printing

By Bailey

H.B. No. 868

Substitute the following for H.B. No. 868:

By Place

C.S.H.B. No. 868

## A BILL TO BE ENTITLED

### AN ACT

relating to prohibiting employment discrimination against certain peace officers or employees of the institutional division of the Texas Department of Criminal Justice for refusing to waive liability in relation to a polygraph examination.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. (a) In this section, "peace officer" means a person who is elected, appointed, or employed by a governmental entity and who is a peace officer under Article 2.12, Code of Criminal Procedure, or other law.

(b) A peace officer may not be suspended, discharged, or subjected to any other form of employment discrimination solely because the peace officer refuses to waive the liability of a person or entity in relation to a polygraph examination that has been or will be administered to the peace officer.

(c) This section does not apply to a peace officer to whom Section 411.007, Government Code, applies.

SECTION 2. An employee of the institutional division of the Texas Department of Criminal Justice may not be suspended, discharged, or subjected to any other form of employment discrimination solely because the employee refuses to waive the liability of a person or entity in relation to a polygraph examination that has been or will be administered to the employee.

SECTION 3. (a) Section 1 of this Act takes effect September

1 1, 1991.

2 (b) Section 2 of this Act takes effect January 1, 1992.

3 SECTION 4. The importance of this legislation and the  
4 crowded condition of the calendars in both houses create an  
5 emergency and an imperative public necessity that the  
6 constitutional rule requiring bills to be read on three several  
7 days in each house be suspended, and this rule is hereby suspended.

COMMITTEE REPORT

The Honorable Gib Lewis  
Speaker of the House of Representatives

4 - 11 - 91  
(date)

Sir:  
We, your COMMITTEE ON CORRECTIONS,  
to whom was referred HB 868 have had the same under consideration and beg to report  
(measure)

back with the recommendation that it  
( ) do pass, without amendment.  
( ) do pass, with amendment(s).  
(X) do pass and be not printed; a Complete Committee Substitute is recommended in lieu of the original measure.  
A fiscal note was requested. (X) yes ( ) no An author's fiscal statement was requested. ( ) yes (X) no  
A criminal justice policy impact statement was requested. ( ) yes (X) no  
An equalized educational funding impact statement was requested. ( ) yes (X) no  
An actuarial analysis was requested. ( ) yes (X) no  
A water development policy impact statement was requested. ( ) yes (X) no  
A federal funds impact statement was requested. ( ) yes (X) no  
( ) The Committee recommends that this measure be sent to the Committee on Local and Consent Calendars.  
This measure (X) proposes new law. ( ) amends existing law.  
House Sponsor of Senate Measure \_\_\_\_\_

The measure was reported from Committee by the following vote:

	AYE	NAY	PNV	ABSENT
Hightower, Ch.	X			
Culberson, V.C.	X			
Telford, C.B.O.	X			
Chisum		X		
Granoff	X			
Johnson, S.		X		
Place	X			
Repp			X	
Smith, D.		X		

Total  
5 aye  
3 nay  
1 present, not voting  
0 absent

Allen Hightower  
CHAIRMAN  
Deborah K. McCall  
COMMITTEE COORDINATOR

## BILL ANALYSIS

By: BAILEY  
By: PLACE

HB 868  
CSHB 868

### BACKGROUND

In 1987, the Legislature passed legislation amending Section 411.007, Government Code, which provides that peace officers employed by the Texas Department of Public Safety may not be disciplined or discriminated against for refusing to take a polygraph examination during an internal investigation.

In 1989, the Legislature passed HB 1701 which would have prohibited discrimination against all other peace officers and TDCJ employees for refusing to take a polygraph examination during an internal investigation. Governor Clements vetoed this bill. Some police employee groups believe that polygraphs are inaccurate and unreliable and thus should not be the sole basis for disciplinary action.

The TDCJ-ID is under federal mandate issued by Judge William Wayne Justice regarding the Ruiz litigation. TDCJ-ID must follow this mandate to be in compliance. The I.D. is obligated to follow the "Use of Force Plan" according to this mandate. This plan is legal and binding and agreed to by the State of Texas. The Use of Force Plan is used to determine the wrong doing of staff or inmates. This plan outlines how the agency must investigate, handle and document any and all allegations of physical abuse or mental torment by staff.

CSHB 868 would not take precedence over the federal mandate issued. The mandate specifically states the procedures that must be followed. The TDCJ-ID has no leeway regarding these stipulations.

### PURPOSE

CSHB 868 would prohibit disciplinary action or employment discrimination against peace officers or employees of the institutional division of the TDCJ-ID for refusing to sign a waiver for a polygraph examination.

### RULEMAKING AUTHORITY

It is the committee's opinion that CSHB868 grants no additional rulemaking authority to any state agency, officer, department or institution.

### SECTION-BY-SECTION ANALYSIS

SECTION 1: (a) Defines the term "peace officer."

(b) States a peace officer may not be subjected to employment discrimination of any form solely for refusing to waive

the liability of a person or entity in relation to a polygraph examination.

(c) This section does not apply to peace officers to whom Section 411.007, Government Code, applies.

SECTION 2: States an employee of the TDCJ-ID may not be subjected to employment discrimination of any form solely for refusing to waive the liability of a person or entity in relation to a polygraph examination.

SECTION 3: (a) Effective date for Section 1 - September 1, 1991.

(b) Effective date for Section 2 - January 1, 1992.

SECTION 4: Emergency clause.

#### SUMMARY OF COMMITTEE ACTION

Public notice was posted in accordance to the rules and a public hearing was held on 3/20/91. On this date, HB868 was left pending before the full committee.

An announcement was made on the House floor in accordance to the rules and a formal meeting was held on 4/11/91. Representative Allen Place offered a committee substitute which was adopted favorably.

On 4/11/91, the full committee voted to report CSHB 868 to the full House with the recommendation that it do pass by a record vote of 5 ayes, 3 nays, 1 pnv, and 0 absent.

#### COMPARISON OF ORIGINAL BILL TO SUBSTITUTE

The original bill stated that peace officers and employees of the TDCJ-ID would not be disciplined in any form for refusing to submit to the polygraph examination. The substitute changed that language to a peace officer or employee of the TDCJ-ID would not be disciplined in any form for refusing to sign a waiver of liability in relation to the polygraph examination being administered. The effective dates for peace officers and TDCJ-ID employees were divided into September 1, 1991 and January 1, 1992. The remainder of the bill remains the same.

Committee on Corrections  
March 19, 1991  
sbw

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE**

**April 15, 1991**

**TO: Honorable Allen Hightower, Chair  
Committee on Corrections  
House of Representatives  
Austin, Texas**

**IN RE: Committee Substitute for  
House Bill No. 868**

**FROM: Jim Oliver, Director**

In response to your request for a Fiscal Note on Committee Substitute for House Bill No. 868 (relating to prohibiting employment discrimination against certain peace officers and employees of the institutional division of the Texas Department of Criminal Justice for refusing to waive liability in relation to a polygraph examination) this office has determined the following:

No significant fiscal implication to the State or units of local government is anticipated.

**Source: Department of Criminal Justice  
LBB Staff: JO, JWH, DF, BP, PA**

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE**

**March 19, 1991**

**TO: Honorable Allen Hightower, Chair**  
**Committee on Corrections**  
**House of Representatives**  
**Austin, Texas**

**IN RE: House Bill No. 868**  
**By: Bailey**

**FROM: Jim Oliver, Director**

**In response to your request for a Fiscal Note on House Bill No. 868 (relating to prohibiting employment discrimination against certain peace officers and employees of the institutional division of the Texas Department of Criminal Justice for refusing to take a polygraph examination) this office has determined the following:**

**No significant fiscal implication to the State or units of local government is anticipated.**

**Source: Department of Criminal Justice**  
**LBB Staff: JO, JWH, DF, BP, PA**



H. B. No. 868

By Kevin Bailey

A BILL TO BE ENTITLED

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FEB 7 1991

1. Filed with the Chief Clerk.

FEB 20 1991

2. Read first time and Referred to Committee on

CORRECTIONS

APR 11 1991

3. Reported ☒ favorably <sup>(as amended)</sup> and sent to Printer at 6:40p  
<sub>(as substituted)</sub> APR 16 1991

APR 17 1991

4. Printed and distributed at 10:16am

APR 30 1991

5. Sent to Committee on Calendars at 2:34pm

6. Read second time (amended); passed to third reading (failed) by (Non-Record Vote) (Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting).

7. Motion to reconsider and table the vote by which H.B. \_\_\_\_\_ was ordered engrossed prevailed (failed) by a (Non-Record Vote) (Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, and \_\_\_\_\_ present, not voting).

8. Constitutional Rule requiring bills to be read on three several days suspended (failed to suspend) by a four-fifths vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, and \_\_\_\_\_ present, not voting.

9. Read third time (amended); finally passed (failed) by (Non-Record Vote) (Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present, not voting).

10. Caption ordered amended to conform to body of bill.

11. Motion to reconsider and table the vote by which H. B. \_\_\_\_\_ was finally passed prevailed (failed) by a (Non-Record Vote) (Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, and \_\_\_\_\_ present, not voting).

12. Ordered Engrossed at \_\_\_\_\_

13. Engrossed.

14. Returned to Chief Clerk at \_\_\_\_\_

15. Sent to Senate.

\_\_\_\_\_  
Chief Clerk of the House

16. Received from the House

17. Read, referred to Committee on \_\_\_\_\_

18. Reported favorably

19. Reported adversely, with favorable Committee Substitute; Committee Substitute read first time.

20. Ordered not printed.

21. Regular order of business suspended by  
(a viva voce vote.)  
(\_\_\_\_\_ yeas, \_\_\_\_\_ nays.)

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HOUSE OF REPRESENTATIVES

\_\_\_\_\_ 22. To permit consideration, reading and passage, Senate and Constitutional Rules suspended by vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays.

\_\_\_\_\_ 23. Read second time \_\_\_\_\_ passed to third reading by:  
(a viva voce vote.)  
(\_\_\_\_\_ yeas, \_\_\_\_\_ nays.)

\_\_\_\_\_ 24. Caption ordered amended to conform to body of bill.

\_\_\_\_\_ 25. Senate and Constitutional 3-Day Rules suspended by vote of \_\_\_\_\_ yeas,  
\_\_\_\_\_ nays to place bill on third reading and final passage.

\_\_\_\_\_ 26. Read third time and passed by  
(a viva voce vote.)  
(\_\_\_\_\_ yeas, \_\_\_\_\_ nays.)

OTHER ACTION:

OTHER ACTION:

\_\_\_\_\_  
Secretary of the Senate

\_\_\_\_\_ 27. Returned to the House.

\_\_\_\_\_ 28. Received from the Senate (with amendments.)  
(as substituted.)

\_\_\_\_\_ 29. House (Concurred) (Refused to Concur) in Senate (Amendments) by a (Non-Record  
(Substitute) Vote) (Record Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, \_\_\_\_\_ present,  
not voting).

\_\_\_\_\_ 30. Conference Committee Ordered.

\_\_\_\_\_ 31. Conference Committee Report Adopted (Rejected) by a (Non-Record Vote) (Record  
Vote of \_\_\_\_\_ yeas, \_\_\_\_\_ nays, and \_\_\_\_\_ present, not voting).

\_\_\_\_\_ 32. Ordered Enrolled at \_\_\_\_\_